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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,878	01/23/2001	Graham Wolsteholme	MI55-003	4402
21567	7590	12/19/2002		
WELLS ST. JOHN ROBERTS GREGORY & MATKIN P.S. 601 W. FIRST AVENUE SUITE 1300 SPOKANE, WA 99201-3828			EXAMINER [REDACTED]	BOOTH, RICHARD A
			ART UNIT [REDACTED]	PAPER NUMBER 2812
DATE MAILED: 12/19/2002				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/768,878	WOLSTENHOLME, GRAHAM
	Examiner Richard A. Booth	Art Unit 2812

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 November 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 24-31,36,37,39-41 and 45-54 is/are pending in the application.
 - 4a) Of the above claim(s) 39 is/are withdrawn from consideration.
- 5) Claim(s) 24-31 and 45-53 is/are allowed.
- 6) Claim(s) 36,37,40 and 41 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 23 24
26
- 4) Interview Summary (PTO-413) Paper No(s). _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Election/Restrictions

Claim 39 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8. Since generic claim 36 is no longer allowable, claim 39 is withdrawn from consideration until such a time that claim 36 is deemed allowable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-37 and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee, U.S. Patent 5,270,240.

Lee shows the invention substantially as claimed including forming a line of floating gates 10 over a semiconductor substrate 20, the line of floating gates having a source side 16 and a drain side 18, the line of floating gates having an insulative cap 112 having an outermost surface; depositing an insulative sidewall forming layer 120 over the line of floating gates; and in one insulative anisotropic etching step, forming insulative sidewall spacers (see fig. 12) elevationally coincident with the insulative cap outermost surface (see col. 6-line 31 to col. 7-line 3).

Lee fails to expressly disclose forming a spacer on the source or drain side and not forming the spacer on the other side and then forming said spacer on the other side. However, a *prima facie* case of obviousness still exists because in general, the transposition of process steps or the splitting of one step into two, where the processes are substantially identical or equivalent in terms of function, manner and result, was held to not patentably distinguish the processes. *Ex parte Rubin* 128 USPQ 440 (PTO BdPatApp 1959).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A. Booth whose telephone number is 308-3446. The examiner can normally be reached on Monday-Thursday from 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Niebling can be reached on 308-3325. The fax phone numbers for the organization where this application or proceeding is assigned are 308-7724 for regular communications and 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1782.



Richard A. Booth
Primary Examiner
Art Unit 2812

December 15, 2002